



**ARKANSAS INSURANCE DEPARTMENT  
LEGAL DIVISION**

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**RULE AND REGULATION 53**

**DEFINITION OF STANDARDS AND COMMISSIONER'S AUTHORITY FOR  
COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION**

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**SECTION 1. AUTHORITY**

This Rule and Regulation is adopted and promulgated by the Insurance Commissioner for the State of Arkansas ("Commissioner") pursuant to Arkansas Code Annotated §§ 23-61-103, 23-61-108, 23-63-205, 23-63-213, 23-68-105, 23-68-106, 23-68-107, 23-68-08, 23-69-138, 23-71-103, 23-72-103, 23-73-104, 23-74-705, 23-75-102, 23-76-103 and 25-15-201, et seq.

**SECTION 2. PURPOSE**

The purpose of this Rule and Regulation is to set forth the standards which the Commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance.

For purposes of this Rule and Regulation "insurer" means an authorized insurer as defined in Arkansas Code Annotated § 23-60-102(11).

This Rule and Regulation shall not be interpreted to limit the powers granted the Commissioner by any laws or parts of laws of this state, nor shall this Rule and Regulation be interpreted to supercede any laws or parts of laws of this state.

**SECTION 3. STANDARDS**

The following standards, either singly or a combination of two or more, may be considered by the Commissioner to determine whether the continued operation of any insurer transacting an insurance business in this

state might be deemed to be hazardous to the policyholders, creditors or the general public. The Commissioner may consider:

1. Adverse findings reported in financial condition and market conduct examination reports;
2. The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;
3. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;
4. The insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
5. The ability of an assuming reinsurer to perform, and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
6. The insurer's operating loss in the last twelve (12) month period or any shorter period of time, including but not limited to, net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of such insurer's remaining surplus as regards policyholders in excess of the minimum required;
7. Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;
8. Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the insurer;
9. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;
10. The age and collectibility of receivables;
11. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;
12. Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
13. Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
14. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;
15. Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

## **SECTION 4. COMMISSIONER'S AUTHORITY**

A. For the purposes of making a determination of an insurer's financial condition under this Rule and Regulation, the Commissioner may:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;
2. Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;
3. Refuse to recognize the stated value of accounts receivable, if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;
4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included, if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve (12) month period.

B. If the Commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the Commissioner may, upon his determination, issue an order requiring the insurer to:

1. Reduce the total amount of present and potential liability for policy benefits by reinsurance;
2. Reduce, suspend or limit the volume of business being accepted or renewed;
3. Reduce general insurance and commission expenses by specified methods;
4. Increase the insurer's capital and surplus;
5. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
6. File reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
7. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
8. Document the adequacy of premium rates in relation to the risks insured;
9. File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners, or on such format as promulgated by the Commissioner.

If the insurer is a foreign insurer, the Commissioner's order may be limited to the extent provided by the Arkansas Insurance Code.

C. Any insurer subject to an order under Subsection B may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to Arkansas Code Annotated §§ 23-61-301, et seq. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the Commissioner based the order. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in Pulaski County, Arkansas, or in some other place of convenience to the parties to be designated by the Commissioner. The Commissioner shall

hold all hearings under this Subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

#### **SECTION 5. JUDICIAL REVIEW**

Any order or decision of the Commissioner shall be subject to review in accordance with Arkansas Code Annotated '23-61-307 at the instance of any party to the proceedings whose interests are substantially affected.

#### **SECTION 6. SEVERABILITY**

If any Section or portion of a Section of this Rule and Regulation is held invalid by a court, the remainder of this Rule and Regulation shall not be affected thereby.

#### **SECTION 7. EFFECTIVE DATE**

This Rule and Regulation shall become effective September 2, 1991.

(signed by Commissioner Douglass)  
LEE DOUGLASS  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

July 26, 1991  
DATE